

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 15.11.2019

Order Passed on : 29/11/2019

W.P.(227) No. 649 of 2014

1. Jayesh Yadav, S/o. Shri R.R. Yadav, aged about 42 years
2. Ashish Yadav, S/o. Shri R.R. Yadav, aged about 36 years,
No.1 and 2 both are R/o. House No. 156, Opposite Shri Ram Colony,
Panchsheel Colony, Behind Collectorate, Chhindwara (Madhya
Pradesh) 48001.
3. Smt. Priti Jabalpure, W/o. Shri Deepak Jabalpure, aged about 40
years, R/o. 33/D Bhau Sahed Surve Nagar, Mangal Murti Road,
Chaitala Road, Nagpur (M.S.).

---- Petitioners

Versus

1. Arya Pratinidhi Sabha, M.P. & Vidharbh, Dayananad Bhawan,
Maharshi Dayanand Marg, Mangalwari Bazar, Sadar Nagar (MH)
2. Arya Pratinidhi Sabha M.P. & Vidharbha, Durg Bhu Sampatti avam
Parisar Paramarsh Datri Samiti, Arya Nagar, Dhamdha Road, Durg,
tahsil and Distt Durg, Through Adhishta.
3. Pradhan/Mantri, C.G. Pranitya Arya Pratinidhi Sabha, Arya Nagar,
Dhamdha Road, Durg, Dist Durg, Chhattisgarh.

-----Respondents

For Petitioners	: Mr. B.P. Sharma, Advocate & Mr. M.L. Sakat, Advocate
For Respondent No.1	: Mr. Ajay Thakre, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

29/11/2019.

1. This petition has been brought being aggrieved by the order dated 21.07.2014, passed by the Court of First Additional District Judge, Durg in Execution Case No.5-A/2003 by dismissing the application for execution on the ground of its executability.
2. It is submitted by the learned counsel for the petitioners that by passing the impugned order, the Court has gone behind the decree, which is not permissible under law. It is submitted that the petitioners had filed a civil suit for specific performance of contract against the respondents, which was disputed by the respondents in their written statement. Later on, on the basis of compromise between the parties, a compromise decree was passed by the Permanent Lok Adalat on 14.08.2005. According to the terms of agreement, subject matter of suit was under procedure of transfer from defendant No.1 to defendant No.3 and that as soon as the transfer/mutation is completed, the suit property will be transferred to the plaintiff/petitioners by the registered sale deed by the defendant No.3, who is respondent No.3 in this petition.
3. After the execution case was filed, the respondent No.1 filed replied vide Annexure P-8 submitting that compromise dated 14.05.2005 has taken place only between the petitioner and the respondent No.3, on the basis of which, the award is passed. The mention of appearance of the counsel on behalf of the respondent No.1 and 2 and his statement that transfer/mutation

of the property under procedure is a false statement and the compromise application does not bear the signature of the respondent No.1 and also that property of the trust was registered in Bombay Public Trust Act, 1950, therefore, any transfer of the property could not be made without the sanction as required under the provisions of Bombay Public Trust Act. Disputing the entitlement of respondent No.3 for entering into a compromise, it was prayed that compromise decree dated 14.08.2005 is fraudulent, therefore, the execution be dismissed.

4. It is submitted that in this case no fraud has been committed and without any enquiry, it could not have been held that the decree is not executable. Placing reliance on the judgment of Supreme Court in case of **Chandro Devi & Ors. Vs. Union of India & Ors.**, reported in **(2017) 9 SCC 469**, it is submitted that it may be a wrong action, every wrong action is not a fraud. Reliance has also been placed on the judgment of Supreme Court in case of **Kumar Dharendra Mullick & Ors. Vs. Tivoli Park Apartments (P) Ltd.**, reported in **(2005) 9 SCC 262**, **Mohd. Masthan Vs. Society of Congregation of the Brothers of the Sacred Heart And Another**, reported in **(2006) 9 SCC 344**. Placing reliance on the judgment of **Rafique Bibi (Dead) By LRs. Vs. Sayed Waliuddin (Dead) by Lrs. & Ors.**, reported in **(2004) 1 SCC 287**, it is submitted that the decree suffering from illegality or irregularity of procedure, can not be termed inexecutable by the executing Court, the remedy of a person aggrieved by such a

decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the decree. Reliance has also been placed on the judgment of Supreme Court in case of ***Hira Lal Patni Vs. Sri Kali Nath***, reported in ***AIR 1962 SC 199***, ***Ramchandra Singh Vs. Savitri Devi & Ors.***, reported in ***(2003) 8 SCC 319***, ***Sunder Dass Vs. Ram Prakash***, reported in ***(1977) 2 SCC 662***, ***Board of Trustees of Port of Kandla Vs. Hargovind Jasraj & Another***, reported in ***(2013) 3 SCC 182*** and the judgment of M.P. High Court in ***Mahila Bhanwari Bai Vs. Kashmir Singh***, reported in ***(2009) 3 J LJ 96*** and it is prayed that the impugned order be set-aside.

5. Counsel appearing for the respondent No.1 submits that compromise has taken place between the respondent No.1 and 3 only. The compromise application did not bear the signature of respondent No.1 and 2 and respondent No.2 was also not present before the Lok Adalat, therefore, this award of compromise has been obtained in a fraudulent manner, without the consensus of respondent No.1 and 2. Because of this fraud, the judgment and decree itself becomes nullity, therefore, it was not executable. Placing reliance on the judgment of Supreme Court in case of ***A. V. Papayya Sastry & Ors. Vs. Govt. of A.P. & Ors.***, reported in ***(2007) 4 SCC 221***, it is submitted that the fraud vitiates all judicial acts whether in rem or in personam, judgment, decree or order obtained by fraud has to be treated as

non est and nullity.

6. In reply, it is submitted by the counsel for the petitioners that the parties are bound to obey and follow the decree. The execution Court has no authority to dismiss the execution. It is also submitted that Section 43 of the Transfer of Property Act also provides that where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Therefore, the transferee i.e. the petitioner has entitlement for execution of the compromise decree on the basis of these provision also. Hence, petition be allowed.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. Under the provisions of Section 47 of the Civil Procedure Code, fraud or collusion in obtaining the decree is a question, which shall be determined by the Execution Court itself. Firstly, the question raised was this that the compromise decree was obtained by fraud. As Order 47 Rule 1 of C.P.C. provides any such question raised shall be determined by the Court executing the decree and not by a separate suit, therefore, this question was needed to be determined. The “determined” means to

adjudge, adjudicate or to come to a conclusion by giving a verdict, therefore, determination has to be done by following requisite procedure.

9. Section 47 itself does not provide for any procedure for determination and subsequent to the deletion of Sub-section (2) of Section 47, there is no procedure prescribed under the Code of Civil Procedure for adjudicating the dispute raised as a question in execution. However, the principle of natural justice shall always prevail and the Court executing the decree has option to exercise the inherent powers under Section 151 of C.P.C.
10. On perusal of the impugned order, it is found mentioned that the respondent No.1 has filed an objection to the execution that the decree had been obtained fraudulently in the Lok Adalat by the petitioners. As there was no authorization by the parties to the counsel and the counsel appeared had given false statement before the Lok Adalat, therefore, compromise decree was obtained by collusion between the parties. Petitioners/decreed holder had filed written arguments denying all the statements in the objection of the respondent No.1 stating that compromise decree was obtained lawfully.
11. This question has been determined in the impugned order only on the basis of the submission made by both the parties and it was held that the decree was obtained fraudulently. No

opportunity was given by the Court to present evidence or file affidavits in support of the submissions made. Therefore, on this basis it can be said that the execution Court has drawn conclusion without following the procedure for determining the same as required for determining any question. The important question that decree was obtained fraudulently is a question of fact and fact needs evidence and only on that basis, any Court shall have capability of determining and coming to any conclusion. The question raised is of great importance because the practice of fraud has been viewed very seriously, as it is mentioned in the case of **A.V. Papayya Sastry & Ors.** (Supra) and also in case of **Mahila Bhanwari Bai** (supra) by High Court of M.P., therefore, I am of this view that matter should be remanded back to the Execution Court for proper determination of the objection raised by the respondent side after affording the opportunity as may be required to the parties in deciding the question afresh.

12. In a result, this petition is allowed with modification. The impugned order dated 21.07.2014 is set-aside and the trial Court is directed to determine the objection raised by the respondent side after affording the opportunity of hearing as may be required to the parties in deciding the question afresh.

Sd/-
(Rajendra Chandra Singh Samant)
Judge